

BEFORE THE DEPARTMENT OF PUBLIC  
HEALTH AND HUMAN SERVICES OF THE  
STATE OF MONTANA

In the matter of the adoption of New	)	NOTICE OF PUBLIC HEARING ON
Rule I and the amendment of ARM	)	PROPOSED ADOPTION AND
37.97.102, 37.97.132, and 37.97.186	)	AMENDMENT
pertaining to updating rules for youth	)	
care facilities	)	

TO: All Concerned Persons

1. On February 4, 2015, at 11:00 a.m., the Department of Public Health and Human Services will hold a public hearing in Room 207 of the Department of Public Health and Human Services Building, 111 North Sanders, Helena, Montana, to consider the proposed adoption and amendment of the above-stated rules.

2. The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Public Health and Human Services no later than 5:00 p.m. on January 28, 2015, to advise us of the nature of the accommodation that you need. Please contact Kenneth Mordan, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; telephone (406) 444-4094; fax (406) 444-9744; or e-mail [dphhslegal@mt.gov](mailto:dphhslegal@mt.gov).

3. The rule as proposed to be adopted provides as follows:

NEW RULE I YOUTH CARE FACILITY (YCF): FIRE SAFETY (1) The department adopts and incorporates by reference group R-3 of the International Fire Code (IFC), January 1, 2012, which sets forth the fire safety regulations that apply to youth care facilities. A copy of group R-3 of the International Fire Code may be obtained from the Fire Prevention and Investigation Section of the Department of Justice, 2225 11th Avenue, Helena, Montana, 59620.

(2) The state fire marshal must annually certify a YCF for fire and life safety.

(3) Smoke detectors approved by a recognized testing laboratory must be located on each level of the facility, at the top of stairways, in any bedroom, in any hallway leading to bedrooms, and in areas requiring separation as set forth in the International Fire Code according to Section 907.2.10, IFC.

(4) Carbon monoxide detectors installed in facilities with fuel-burning appliances or with attached garages must be installed per manufacture recommendations according to Section 1103.9, IFC.

(5) A workable portable fire extinguisher, with a minimum rating of 2A10BC, must be located on each floor of the facility. Fire extinguishers must be:

(a) mounted on the wall not to exceed five feet from handle to floor and no closer than four inches from the floor;

- (b) no more than 75 feet from each other;
- (c) inspected, recharged, and tagged at least once a year by a person certified by the state to perform such services; and
- (d) not obstructed or obscured from view.
- (6) Facility staff must check smoke detector batteries at least once each month and the batteries must be replaced at least once each year. Documentation, including the date and the signature of the person checking or replacing the batteries, must be maintained at the facility.
- (7) The staff must be trained in the proper use of facility fire extinguishers and documentation of the training must be maintained at the facility.
- (8) Staff, at the time of hire, and residents, at the time of admission, must be instructed in the facility's fire evacuation procedure. The fire evacuation procedure must be posted in a conspicuous place in the YCF.
- (9) All exits must be clear and unobstructed at all times.
- (10) Paint, flammable liquids, and other combustible material must be kept in locked storage away from heat sources or in outbuildings not used by the youth.
- (11) The YCF must conduct at least four fire drills annually, no closer than two months apart, with at least one drill occurring on each shift. Drill observations must be documented and maintained in the facility files for at least two years. The documentation must include:
  - (a) location of the drill;
  - (b) identification of participating staff;
  - (c) problems identified during the drill; and
  - (d) steps taken to correct such problems.

AUTH: 52-2-111, 52-2-113, 52-2-603, 52-2-622, MCA  
IMP: 52-2-111, 52-2-603, 52-2-622, MCA

4. The rules as proposed to be amended provide as follows, new matter underlined, deleted matter interlined:

37.97.102 YOUTH CARE FACILITY (YCF): DEFINITIONS The following definitions apply to all YCF licensing rules:

- (1) remains the same.
- (2) "Child" or "youth" means any person under the age of 18 years, without regard to emancipation, except for youth covered by Montana Medicaid programs which allow for participation of youth up to the age of 24 20 years as defined in ARM 37.87.102, and parenting or pregnant youth, up to the age of 21 years, who are placed in a child care agency-maternity home.
- (3) through (33) remain the same.

AUTH: 41-3-1142, 52-2-111, 52-2-603, 52-2-622, MCA  
IMP: 52-2-113, 52-2-602, 52-2-622, 53-2-201, MCA

37.97.132 YOUTH CARE FACILITY (YCF): GENERAL REQUIREMENTS FOR ALL ADMINISTRATORS, STAFF, INTERNS, AND VOLUNTEERS (1) A YCF

~~shall~~ must have written personnel and program policies and procedures covering ~~but not limited to~~ the following items:

- (a) through (e) remain the same.
- (2) A YCF ~~shall~~ must maintain records for each staff member, volunteer, and intern regarding the following:
  - (a) through (3) remain the same.
  - (4) The department may require an evaluation or medical examination of, ~~and/or~~ a signed authorization for release of medical records, or both from any YCF staff, intern, or volunteer if there are grounds to believe these individuals have engaged in behaviors which may place the YCF youth at risk of harm.
  - (5) and (6) remain the same.
  - (7) YCF volunteers and interns ~~shall~~ must:
    - (a) and (b) remain the same.
    - ~~(c) be provided orientation and initial training procedures. The training must include orientation on all YCF policies and procedures;~~
    - ~~(d) (c) follow written policies and procedures developed by the YCF defining the responsibilities, limitations, and supervision of volunteers and interns; and~~
    - ~~(e) (d) complete all required background checks; and~~
    - (e) be provided orientation and initial training procedures. The training must include orientation on all YCF policies and procedures.
  - (8) All direct-care staff must have a valid driver's license and follow all laws applicable to driving in Montana.

AUTH: 52-2-111, 52-2-603, 52-2-622, MCA

IMP: 52-2-111, 52-2-603, 52-2-622, MCA

#### 37.97.186 YOUTH CARE FACILITY (YCF): PHYSICAL ENVIRONMENT

- (1) A YCF ~~shall~~ must provide a minimum of ten foot-candles of light in all rooms and hallways, with the following exceptions:
  - (a) through (5) remain the same.
  - (6) The YCF ~~shall~~ must provide:
    - (a) and (b) remain the same.
    - (7) All resident rooms with toilets or shower/ and bathing facilities must have an operable window to the outside or must be exhausted to the outside by a mechanical ventilation system.
    - (8) and (9) remain the same.
    - (10) Hot and cold water must be available in the YCF. Water temperatures for hot water must be limited to 120°F or below.
    - (11) For adequate housekeeping the YCF must ensure that:
      - (a) the building and grounds are free, to the extent possible, of harborage for insects, rodents, and other vermin;
      - (b) the floors, walls, ceilings, furnishings, and other equipment is clean and in good repair, free of hazards, and offensive odors;
      - (c) cleaning equipment and supplies are provided in sufficient quantity to meet the housekeeping needs of the facility; and
      - (d) a maintenance policy and schedule, which describes the regular maintenance of the facility, is adhered to.

AUTH: 52-2-111, 52-2-603, 52-2-622, MCA  
IMP: 52-2-113, 52-2-603, 52-2-622, MCA

## 5. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services (the department) is proposing to adopt New Rule I and to amend ARM 37.97.102, 37.97.132 and 37.97.186 pertaining to youth care facilities. New Rule I and the changes to the existing rules are necessary to update the administrative rules to reflect current fire safety standards, replace rules that were inadvertently left out of the 2011 revision and allow for licensure of Child Care Agency – Maternity Homes to admit residents up to the age of 21 pursuant to MAR Notice No. 37-685.

### New Rule I

New Rule I is necessary to ensure the safety of all youth served in youth care facilities. New Rule I sets forth current fire safety regulations as required in the International Fire Code. The rule has been written with the assistance of the Montana Fire Prevention and Investigation Bureau. This rule provides for the proper installation and maintenance of fire safety equipment and training for staff and is necessary to ensure all staff and youth are prepared to respond and evacuate appropriately in the event a fire should occur.

### ARM 37.97.102

There are two proposed amendments to this rule. The first proposed amendment implements the age requirement in ARM 37.97.102, which rule has been amended to change the age from 21 to 20. The second amendment is necessary to implement changes to ARM 37.50.315 with respect to the Foster Care Classification Model. That change, when effective, will add an additional level to the classification model allowing the department to contract with, and provide payment for Transitional Living Programs. The proposed amendment allows the department to license child care agency-maternity homes to provide the additional level of services.

Additionally, the proposed amendment to the definition of youth allows parenting or pregnant teens up to the age of 21 to be served in a child care agency-maternity home. The request to place older pregnant or parenting youth in a child care agency-maternity home has increased significantly within the past few years. The amended rule is necessary to allow the department to provide a safe environment for older youth while they learn appropriate parenting skills, as well as receive prenatal care in a safe, nurturing environment.

### ARM 37.97.132

The proposed amendment is necessary to ensure all youth and staff are transported in a vehicle in a safe manner. The amended rule requires staff to follow all laws

applicable to driving in the state of Montana. In addition, this rule allows for providers to employ college students or individuals that recently relocated to Montana that have been issued a driver's license in another state.

ARM 37.97.186

The proposed amendment is necessary to provide for safety elements that were missing and to ensure the facilities are well maintained, clean, and in good repair.

6. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Kenneth Mordan, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; fax (406) 444-9744; or e-mail [dphhslegal@mt.gov](mailto:dphhslegal@mt.gov), and must be received no later than 5:00 p.m., February 12, 2015.

7. The Office of Legal Affairs, Department of Public Health and Human Services, has been designated to preside over and conduct this hearing.

8. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in 6 above or may be made by completing a request form at any rules hearing held by the department.

9. An electronic copy of this proposal notice is available through the Secretary of State's web site at <http://sos.mt.gov/ARM/Register>. The Secretary of State strives to make the electronic copy of the notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. In addition, although the Secretary of State works to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

10. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

11. With regard to the requirements of 2-4-111, MCA, the department has determined that the adoption and amendment of the above-referenced rules will not significantly and directly impact small businesses.

/s/ Susan Callaghan  
Susan Callaghan, Attorney  
Rule Reviewer

/s/ Richard H. Opper  
Richard H. Opper, Director  
Public Health and Human Services

Certified to the Secretary of State January 5, 2015.